

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DONNA RHODES and JASON RHODES,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV 04-476-P
)	
JAMES D. CURTIS and FIRST CLASS CARTAGE, INC.,)	
)	
)	
Defendants.)	

ORDER and OPINION

Before the Court is Defendants’ Motion for Partial Summary Judgment on Plaintiffs’ Negligent Hiring/Retention/Training Claims and Punitive Damages (docket #28), filed with this Court on January 13, 2006. In response to this Motion, Plaintiffs filed a Stipulation of Dismissal of Punitive Damage Claim (docket #29), but failed to address Defendants’ challenge to the negligent hiring/retention/training claims. These claims are now at issue.

“When a motion for summary judgment is made . . . , an adverse party . . . must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.” Fed. R. Civ. P. 56(e); *see also* Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 672 (10th Cir. 1998) (“[T]he nonmovant must carry its burden in the district court in a timely fashion pursuant to Rule 56(e) . . . or explain why it cannot pursuant to Rule 56(f). Otherwise, the nonmovant acts, or fails to act, at its peril.”) (internal citations omitted). Here, because Plaintiffs did not respond to the instant Motion, the Court deems the issues raised therein confessed.

Indeed, it is well settled that, when vicarious liability is admitted, a claim for negligent

hiring/retention/training cannot continue. *See, e.g., Jordan v. Cates*, 935 P.2d 289 (Okla. 1997); *N.H. v. Presbyterian Church (U.S.A.)*, 998 P.2d 592 (Okla. 1999); *Johnson v. Dillard's*, 2005 WL 2372153 (W.D. Okla. 2005) (slip op.). Here, Defendant First Class Cartage, Inc. has admitted that its employee, Defendant James D. Curtis, was acting in the scope of his employment at the time of the automobile accident at issue in this case, and that the company is vicariously liable. Therefore, Defendants are entitled to judgment as a matter of law on Plaintiffs' negligent hiring/retention/training claims. Accordingly, Defendants' Motion for Partial Summary Judgment is GRANTED.

IT IS SO ORDERED this 12th day of April 2006.


James H. Payne
United States District Judge
Eastern District of Oklahoma